

KERALA HIGH COURT

Food Inspector

Vs

Seetharam Rice and Oil Mills

Criminal Appeals Nos. 222, 223, 225 to 227 of 1973 and 168 of 1974, CrI. R. P. Nos. 515 of 1972; 228; 356; 394; 395; 396 and 398 of 1973 and CrI. M.P. No. 730 of 1972

(P. Narayana Pillai, K. Bhaskaran and S.K. Kader, JJ.)

23.07.1974

JUDGMENT

Kader, J.

1. These criminal appeals, revision petitions and the criminal miscellaneous petition raise certain points of great importance relating to the scope of and procedure contemplated under Section 20-A of the Prevention of Food Adulteration Act, 1954, which will hereinafter be referred to, for brevity, the Act.

2. The points which fall for determination are :

- (i) What is the scope of Section 20-A of the Act; and
- (ii) What is the procedure to be followed in the matter of trial of a case coming under this section in other words, does this section envisage a joint trial of the vendor along with the manufacturer, distributor or the dealer of any article of food.

3. The relevant and material facts necessary for the disposal of these criminal appeals, revisions and miscellaneous petition can be stated in a short compass :

CrI. Appeals Nos. 222, 223 and 225 to 227 of 1973 are directed against the acquittals of the vendors in these cases; the appellant in all these cases being the Food Inspector attached to the Palghat Municipality. The Food Inspector, the complainant in these cases, purchased gingelly oil from the original accused in these cases, after complying with the due formalities prescribed under the Act, for the purpose of analysis. The sample purchased was found to be adulterated. The vendors were thereupon put on trial for offences punishable under Section 16(1)(a)(i) read with Section 7 of the Act. In the course of trial, when the vendors (the original accused) were examined in their respective cases under Section 342 of the Code of Criminal Procedure, 1898, they pleaded that the article

sold by them to the Food Inspector was covered by a written warranty and sought protection under Section 19(2) of the Act. On entering upon their defense, they adduced evidence in support of their plea. Invoices and the written warranties said to be issued were marked on their side. The respective manufacturers, distributors or the dealers, who sold these articles of food and issued the warranties to the vendors were also examined as defense witnesses. Thereafter, on applications filed in each of these cases by the Food Inspector, the learned Magistrate on being satisfied on the evidence on record that the manufacturers, distributors or the dealers of the articles of food who sold these articles and issued the respective warranties, were concerned with the offence, impleaded them in the respective cases as additional accused and acquitted the vendors, the original accused. Respondents 3 to 6 (accused 3 to 6) in Crl. Appeals Nos. 222, 223 and 225 of 1973 and respondents 3 to 5 (accused 3 to 5) in Crl. Appeals Nos. 226 and 227 of 1973 are respectively the newly added accused, by invoking Section 20-A of the Act. The complainant, the Food Inspector, in these cases has come up in appeal, being aggrieved by the orders of acquittal, Crl. R. P. Nos. 356, 398, 396, 394 and 395 of 1973 are those filed by the above mentioned respondents in these appeals challenging the orders of impleadment in these respective cases.

4. Crl. R. P. No. 515 of 1972 is filed by accused No. 3 in C. C. No. 94 of 1972 on the file of the District Magistrate (now the Chief Judicial Magistrate), Trichur, questioning the validity of the order impleading him as an additional accused in the case under Section 20-A of the Act. The Food Inspector, Trichur Municipality, purchased toor dhal from accused 1 and 2, who are respectively the proprietor and the salesman of a business concern at Trichur and on analysis the sample purchased was found to be adulterated. In the course of the trial, the vendors contended that they purchased this article of food from a firm called 'United Traders' under a written warranty. The invoice containing the warranty was produced and marked and oral evidence also was let in to support their contentions. On an application by the complainant, the Food Inspector, the learned Magistrate impleaded the petitioner, who is said to be the Managing Director of the firm mentioned above, as additional accused No. 3.

5. Crl. M. P. No. 730 of 1972 is filed under Section 561A of the Code of Criminal Procedure, 1898, by the petitioner who has been impleaded as an additional accused in C. C. No. 93 of 1972 on the file of the District Magistrate (now Chief Judicial Magistrate), Trichur, for quashing the impleadment of the petitioner as a co-accused in the said case. The sample of moongdhal purchased by the Food Inspector of Trichur Municipality from a firm constituted by Respondents 2 to 4 was, on analysis, found to be adulterated as it contained prohibited coaltar dye. Thereupon the 1st respondent herein the Food Inspector, Trichur Municipality, laid a complaint against Respondents 2 to 4; and in the course of trial Respondents 2 to 4 contended that the article of food sold by them to the Food Inspector was purchased by them from M/s. Jayanthilal and Co., Bombay, and it was covered by a written warranty. The learned Magistrate on being satisfied on the evidence on record impleaded the petitioner as an additional accused in the case under Section 20A of the Act and issued summons for his appearance.

6. Crl. R. P. No. 228 of 1973 is filed by the 1st accused (the original accused) in C. C. No. 568 of

1972 on the file of the court of the District Magistrate (Judicial), Trichur, challenging the acquittal of Respondents 2 to 6, who constituted a partnership concern on the ground that it is contrary to law. The 7th respondent therein, the Food Inspector of the Trichur Municipality, laid a complaint against the petitioner on the ground that the sample of toor dhal purchased by him from the petitioner was, on analysis, found to contain coaltar dye and therefore adulterated. During the trial, the petitioner pleaded protection under Section 19(2) of the Act contending that he purchased the article of food from Respondents 2 to 6 under a written warranty and evidence also was adduced in support of his plea. The learned Magistrate on being satisfied under Section 20A on the materials available before him, impleaded Respondents 2 to 6 as additional accused in the case and the prosecution witnesses were recalled and reexamined. But, it is alleged that the petitioner was denied an opportunity to cross-examine these witnesses and also to let in further defense evidence. The learned Magistrate, on the conclusion of the trial, while acquitting the newly added accused, found the petitioner guilty of the offence with which he was charged and convicted and sentenced him. This conviction and sentence were challenged by the revision petitioner in Crl. Appeal No. 18 of 1973 before the Sessions Court, Trichur, and the same was pending there. This Court therefore, suo motu withdrew this appeal from that court and numbered it as Crl. Appeal No. 168 of 1974, as it was found desirable, in the interests of justice, that both these cases should be heard and disposed of together.

7. The counsel who appeared for the appellants in the criminal appeals against acquittals contended that Section 20A is a special provision in the Act introduced by the legislature for the purpose of joint trial of the vendor along with the manufacturer, distributor or dealer of any article of food. It is next contended that the learned Magistrate committed an illegality by violating the provisions contained in Section 20A of the Act and acquitting the vendors and then impleading the manufacturers distributors or dealers who issued warranties; that by a piece-meal trial like this the very purpose of the section has been defeated and that therefore, the orders of acquittal have to be quashed and the cases sent back for retrial in accordance with the provisions of Section 20A. While the counsel appearing for the accused who have been newly impleaded in the various cases strenuously contended that Section 20A contemplates only separate trial and not a joint trial and that even if the section permits a joint trial, it can only be in accordance with the provisions contained in Section 239 of the Code of Criminal Procedure, 1898 and now Section 223 of the Code of Criminal Procedure, 1973, which will hereinafter be referred to as the old Code and the new Code respectively; the acquittal of the original accused, the vendors, was supported by the counsel appearing for them asserting that there are no proper grounds to interfere with the orders of acquittal passed by the court below and that the cases against the newly impleaded accused can be proceeded with in separate trials. The counsel appearing for the revision petitioner in Crl. R. F. No. 228 of 1973 challenged the acquittal of the additionally impleaded accused on the ground that the learned Magistrate has not strictly followed the procedure prescribed in Section 20A, that he should have, after impleading the additional accused, commenced a fresh proceeding against all the accused and that the acquittal of the manufacturers, who issued warranties, is contrary to law and has to be interfered with.

8. The Prevention of Food Adulteration Act is a special Act enacted with the intention of eradicating the evil of manufacture, distribution and sale of adulterated articles of food, which is a menace to the public health and welfare. It is quite unfortunate that in these days of food scarcity and soaring rise in prices of even essential commodities, there is an alarming increase of the evil of adulteration. The provisions in this enactment therefore assume great importance. The cautioning and, with great respect, the apt remarks of Dua J. in *Municipal Corporation of Delhi*

*v. Surja Ram*¹, that the anti-social and anti-national conduct in fraudulently selling adulterated articles seems to tend to breed mistrust amongst the citizens and to that extent it adversely affects democracy governed by the rule of law, that it tends to demoralize the nation and grievously obstructs her moral and economic progress and that the administrative and judicial wings of the State have a duty not to adopt an indifferent attitude in this respect, are worth mentioning in this context. The anti-social and unscrupulous elements in the society with a view to get rich quick are indulging in nefarious activities adulterating food articles with all sorts of injurious and even poisonous articles and substances, thereby seriously injuring the health of the community and resulting in disease, disability, and death. Legislation alone may not be able to effectively tackle this menace without an efficient and incorruptible machinery of inspection and analysis of articles of food and a conscious public opinion. It is strange that big merchants, manufacturers and distributors who are indulging in adulteration of articles of food, invariably escape the notice of the officers who are appointed for inspection and detection of the offences under the Act and generally they lay hands only on retailers and petty traders. It is high time, for an effective eradication of this evil, that the public especially those who are interested in the welfare of the country and its rapid social and economic developments, declare a crusade against the unscrupulous manufacturers distributors and dealers of adulterated articles of food.

9. The distinction between a strict and a liberal construction has almost disappeared with regard to all categories of statutes so that all statutes, irrespective of the fact that they are penal or not, are now construed by substantially the same rules. They have to be construed with reference to the true meaning and the real intention of the legislature. (See Craies on Statute Law 7th Edn., p. 531). It is now recognized that the paramount duty of the judicial interpreter is to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object. (Maxwell on Interpretation of Statutes 10th Edn. p. 262). The Supreme Court has quoted this rule of construction with approval in *M.V. Joshi v. M.U. Shimpi*², The primary test is the language employed in the Act and when the words are clear and plain, the court is bound to accept the same. Though the marginal notes cannot be used for interpreting or construing a provision in a statute, they can furnish some clue as to the meaning and purpose of the provision. Similarly the heading in a statute can be referred to only for the purpose of finding out the meaning of a doubtful expression in a section. As far as possible, the courts should adopt that interpretation which promotes and furthers the object and policy of the legislation and suppresses the mischief which the statute is intended to prevent. It is well recognised that the fundamental principle of interpretation of any enactment is that all the provisions therein have to be harmoniously construed so as to achieve the object for which the

¹(1965) 2 Cri LJ 571 (Punj)

² AIR 1961 SC 1494 : (1961) 2 Ker LR 289 : (1961) (2) Cri LJ 696)

law is enacted. A Full Bench of this Court in *Kungu Govindan v. Parakkat Kuzhilekshmi Amma*³, following a decision of the Supreme Court in *Regional P. F. Commissioner v. Shibu Metal Works*⁴, has held that if two constructions are possible of particular words occurring in a statute, the Court should prefer the construction, which would help the furtherance of the object of the Act.

10. In interpreting and construing a section in an enactment, especially one intended to safeguard and maintain public health the purpose of law should not be defeated and that interpretation which would result in defeating the purpose has to be avoided. The statement of objects and reasons stated in the Bill might be looked into far the historical background of the amending

legislation in ascertaining the reasons to enact the same and to find out what exactly was the mischief the legislature was trying to aim at when introducing the amendment.

11. In the light of all these, let us now consider the points raised before us. As the two points are interdependent, they admit of common discussion and can be conveniently considered together. The trial of the offences committed under the Act are generally governed by the provisions of the Code of Criminal Procedure subject to the special provisions in the Act. If complete procedure for trial of an offence is provided for in a special or local enactment, it is that procedure that has to be followed and not the procedure prescribed by the Code. Similarly, when a special or local enactment provides a special procedure only for some matters, its provisions must apply in regard to those matters.

12. Section 20A is a special provision, prescribing certain procedure in respect of certain categories of cases. Section 20A reads :

"Where at any time during the trial of any offence under this Act alleged to have been committed by any person not being the manufacturer, distributor or dealer of any article of food, the court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then, the court may, notwithstanding anything contained in Sub-Section (1) of Section 351 of the Code of Criminal Procedure, 1898, or in Section 20 proceed against him as though a prosecution had been instituted against him under Section 20."

This section was introduced by the Prevention of Food Adulteration (Amendment) Act, 1964, Act 49 of 1964. Section 20A enables the court, during the course of trial of any offence under the Act alleged to have been committed by any person other than the manufacturer, distributor or dealer of any article of food to proceed against such manufacturer, distributor or dealer of the article of food if the court is satisfied on the evidence on its record that such manufacturer, distributor or dealer is also concerned with that offence. This power under this section can be exercised only by a court trying an offence under the Act and this does not empower the Food Inspector or the complainant to file a complaint or launch a prosecution against the vendor and the manufacturer, distributor or the dealer of any article of food under this Act. To invoke

³ AIR 1966 Ker 244

⁴ AIR 1965 SC 1076

the powers under this Section (1) there must have been a trial of an offence under the Act pending against a person other than the manufacturer, distributor or dealer of any article of food; (2) there must have been evidence adduced before court during the trial that such manufacturer, distributor or dealer is concerned with the offence with which the person proceeded against in the trial is charged; and (3) the court must also be satisfied on the evidence adduced before it that such manufacturer, distributor or dealer is concerned with this offence. When once the court obtains the satisfaction referred to above on the evidence before it, the court has no option but to proceed against such manufacturer, distributor or dealer of the article of food, notwithstanding the provisions contained in Section 351(1) of the Code of Criminal Procedure, 1898, and Section 20 of the Act, as though a prosecution had been instituted against him under Section 20. In cases coming under this section, even if the manufacturer, distributor or the dealer of an article of food is not present in court and without a complaint or written consent as contemplated under Section

20 of the Act, the court is empowered to proceed against the manufacturer, distributor or the dealer of an article of food, for any offence under the Act. This section envisages a joint trial of the vendor and the manufacturer, distributor or the dealer of any article of food, as co-accused. In other words, in a proper and fit case coming under this section, the court is empowered to implead the manufacturer, distributor or the dealer of an article of food, as the case may be.

13. It was argued by the counsel for the petitioner in Crl. M. P. No. 730 of 1972, that this section excludes warrantors; that it applies only to manufacturers, distributors or dealer of any article of food and that this section also does not contemplate impleading of these persons, as the word 'impleading' is not used in the section. On a close reading of the section, it can be seen that these contentions are devoid of any merit. What the section says is that a court is entitled to proceed against a manufacturer, distributor or dealer who is found to be concerned with the offence for which the prosecution was initially started. Any of these persons mentioned can be concerned or connected with the offence with which the vendor is charged, by issuing false warranties, by selling adulterated food articles to the vendors and by abetting the offence of selling adulterated food articles and also jointly committing the offence or offences under the Act with the vendors. 'Warrantor' in the context means a person who has issued or given a warranty. The manufacturer, distributor or dealer who issues false warranties can also be proceeded against under this section. The dictionary meaning of the word "concerned" is "interested solicitous, interestedly engaged, etc. (Webster's New Third International Dictionary, p. 470). In *Radha Kishan v. Union of India*⁵, the Supreme Court has given a wide meaning to this word. A person who has issued a false warranty or who has refused to give a warranty as contemplated under Section 14 of the Act or who has manufactured or sold adulterated food articles or distributed the same, to the vendors, is concerned with the offence of the sale of the said food articles by the vendor to a Food Inspector. The section expressly states that if the requirements mentioned therein are satisfied, a magistrate can proceed against the manufacturer, distributor or dealer, as though a prosecution had been instituted against him under Section 20 of the Act. When once the court is satisfied as contemplated in this section and decides to proceed against the manufacturer, distributor or the dealer, he becomes a party to the case pending before

⁵ AIR 1965 SC 1072 : (1965 2 Cri LJ 154)

that court. In other words, he becomes a co-accused with the vendor, the original accused. Therefore it is immaterial whether the word 'impleading' is used or not in the section. 'Implead' means to sue or to prosecute at law or to add as a party in a proceeding whether civil or criminal. In this regard, it is also worthwhile to refer to the report of the Joint Committee on the Prevention of Food Adulteration (Amendment) Bill 1963, on the basis of which this section was introduced. Paragraph 23 of this report dated 4th September 1964 states as follows :

"It has been brought to the notice of the Committee that for want of a provision enabling the court, during the trial of an offence against the vendor of an article of food, to implead the manufacturer, distributor or dealer with respect to such article of food, many manufacturers, distributors and dealers in such article go scot-free. In order to have an effective check at all levels, the Committee consider necessary to have a provision to the effect that if during the trial of any offence alleged to have been committed by any person, not being the manufacturer, distributor or dealer of any article of food, the court is satisfied on the evidence adduced before it that the manufacturer, distributor or dealer is also involved in the offence, the court may proceed against the manufacturer, distributor

or dealer also."

14. It was also argued that Section 20A does not expressly state the stage at which a manufacturer, distributor or a dealer can be impleaded; that it does not state the point of time at which the Magistrate has to apply his mind in this regard : that it is not proper or fair to add these persons as co-accused at a very late stage after the warrantor has been examined as a defense witness; that the impleading if any should be done at the earliest point of time and that in any view, this should not be after the acquittal of the original accused. Relying on the decision in *V.N. Kamdar v. Municipal Corporation, Delhi*⁶, it was contended on behalf of the newly added accused in the various cases that it is not mandatory or imperative on the part of the Magistrate to implead the manufacturer, distributor or dealer of an article of food under Section 20A, as this section is permissive and only contemplates a separate trial against such persons; that the question whether a warrantor or manufacturer can be impleaded under this section was not considered by the Supreme Court and that this decision cannot be pressed into service for the proposition that Section 20A envisages a joint trial. The stage at which a manufacturer, distributor or a dealer can be proceeded against or impleaded in a case has been clearly stated in the section. The plain and express words used therein unmistakably and unequivocally state that this impleadment can be done only during the trial of any person, other than a manufacturer, distributor or dealer of any, article of food, for an offence under the Act. Trial in a warrant case commences only after framing of a charge against the accused. There is therefore no force in the contention that the impleadment under this section should be done at the earliest point of time, even before framing of a charge against the original accused. No hard and fast rule can be laid down indicating the point of time at which the Magistrate has to apply his mind in this regard and it is also not possible to lay down any guidelines indicating the basis, quantum or quality of evidence necessary or sufficient to reach the satisfaction referred to in the section. The satisfaction referred to in the section is that of the Magistrate trying the case and

⁶ AIR 1973 SC 2246: (1973 Cri LJ 1453)

he alone is competent to implead additional accused if any, if he is satisfied to the evidence adduced before him that the person to be impleaded is concerned with the offence with which the original accused is charged.

15. It is true that each decision has to be understood in the light of the facts and circumstances in the particular case. Citing the decision in AIR 1973 Supreme Court 2246 : (1973) Cri LJ 1453 in support of his contentions the counsel in the criminal appeals against acquittals submitted that the scope of and procedure to be adopted under Section 20A and the object and purpose for which this new section was introduced by the amending Act have been fully considered and decided by the Supreme Court in this case. The quintessence of the decision of the Supreme Court in this case is that where a Magistrate fails to exercise the discretion vested in him under Section 20A and implead a manufacturer, distributor or dealer, that would not confer an immunity upon them from the prosecution for any offence committed by them under the Act; but where the Magistrate is satisfied on the evidence adduced before him that the manufacturer, distributor or dealer is concerned with the offence with which the original accused is charged, in order to avoid multiplicity of proceedings and conflict of findings, it is imperative that the Magistrate should implead these persons under this section. The failure of a Magistrate to implead a manufacturer, distributor or dealer of any article of food would not in any way bar a separate prosecution against them. Dealing with these questions. Their Lordships of the Supreme Court have concluded as follows in paragraph 10 of the judgement in the case cited above :

"The real purpose of enacting Section 20A is to avoid, as far as possible, conflicting findings. If, in the prosecution instituted against the vendor, it is found that the vendor has sold the article of food in the same state as he purchased it and that while it was in his possession it was properly stored, and the vendor is acquitted, it would look rather ridiculous, if in the prosecution against the manufacturer, distributor or dealer, it is found on the evidence that he did not give a false warranty, but that the article was not stored properly while it was in the possession of the vendor or that he did not sell the article in the same state as he purchased it. This being so, the object of the legislature in enacting the section will be frustrated if a Magistrate were to exercise his discretion improperly by failing to implead the manufacturer, distributor or dealer under Section 20-A in a case where he should be impleaded. But that is no reason to hold that a separate prosecution against the manufacturer, distributor or dealer would be barred, if he is not impleaded under Section 20-A, and tried along with the person who is alleged to have committed an offence under the Act. In order to avoid multiplicity of proceedings and conflict of findings it is imperative that the Magistrate should implead these persons under Section 20-A whenever the conditions laid down in the section are satisfied."

16. Section 20A of the Act is self-contained and the procedure provided therein is an exception to that in Sections 239 and 177 of the old and Sections 223 and 177 of the new, Code. A special procedure is prescribed under this section for adding or impleading certain persons mentioned therein, in the course of a trial of an offence under the Act. As already stated, this power of impleading during trial can only be exercised by the court trying a particular person and not by the prosecution. There is no provision in Section 239 of the Old Code or Section 223 of the new Code which enables a court to implead a person as co-accused during trial of a case. Sections 233 to 239 in the old Code and the corresponding Sections 218 to 223 of the new Code deal with joint charges. Section 233 states that for every distinct offence of which any person is accused there shall be separate charge, and every such charge shall be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239. The general rule therefore in the Code is that for every distinct offence committed by a person there shall be a separate charge and a separate trial. But this rule is subject to the exceptions mentioned in Sections 234, 235, 236 and 239 of the old Code (the corresponding sections in the new Code are 219, 220, 221 and 223). The purpose and object of Section 239 of the old Code and Section 223 of the new Code are to avoid multiplicity of trials and this, no doubt, does not in any way fetter the discretion of the court. It is left to the discretion of the court depending upon the facts of each case to try the persons mentioned therein either jointly or separately. Section 239 in the old Code and Section 223 of the new Code are the only sections in these Codes which deal with joint trial of more than one person. Under these sections, a complaint or a charge against different persons who are accused of either the same offence committed in the course of the same transaction or accused of different offences committed in the course of the same transaction or persons coming under Clauses (b), (c), (e), (f) and (g) can be instituted and tried together. But no person can be added or impleaded as a co-accused under these sections in the course of a trial. In *Narasimha Reddi v. Emperor*⁷, Burn J. held that there is no provision of law by which a court can add a person as accused after an inquiry had begun. Similarly, in *Public Prosecutor v. K. Sinnappa*⁸, Somasundaram J. held that

cases against several accused tried separately cannot be clubbed together at the defense stage after the evidence of the witnesses was recorded. It is therefore clear that Section 20A of the Act is a special provision distinct and different from the provisions in Section 239 of the old and 223 of the new, Code. Being a special provision in a special enactment, this has to prevail over the general provision in the Code in respect of matters mentioned in this section. When there is a conflict between the general provision and the provision in the special enactment, the provision in the special enactment has to prevail.

17. This apart, the facts of the cases in these criminal appeals, criminal revision petitions and the criminal miscellaneous petition satisfy the requirements under Section 239(d) of the old Code and the corresponding Section 223(d) of the new Code. It is for the purpose of sale that a manufacturer produces an article of food which is adulterated. The distributor, dealer or vendor purchases this adulterated article of food also for the purpose of sale and the article of food ultimately reaches the consumer. The manufacturer, distributor or dealer of an article of food, sells the adulterated food material to a vendor under a written warranty assuring him that the article of food sold is genuine and pure and it is on the basis of this warranty that the vendor in his turn sells the article of food, whether it be to the Food Inspector or to the common consumer. It can be seen therefore that there is a unity of purpose throughout the chain of these events and those series of acts can be said to form part

⁷1933 Mad WN 916

⁸ AIR 1950 Mad 767: (52 Cri LJ 1397)

of the same transaction within the meaning of Section 239(d) of the old and Section 223(d) of the new, Code. There is no question of any common intention or knowledge arising in a case coming under the Act, as mens rea is not an essential element or ingredient of an offence punishable under this Act which creates an absolute liability against the person who contravenes the provisions of the Act. A vendor also can be jointly tried with the manufacturer, distributor or dealer of any article of food, in cases respectively coming under clauses (b) and (c) of Section 239 of the old and clauses (b) and (c) of Section 223 of the new Code. When the words and expressions used in a provision are clear and thereby the legislature has expressed itself in a clear and unambiguous language, the function of the court is only to construe the plain words in the statute giving them their ordinary grammatical construction.

18. Most of these aspects have been considered by a Full Bench of the Delhi High Court in *Delhi Municipality v. Lakshmi Narayan*⁹, It has been held by the Full Bench that Section 20A provides for the impleading of the manufacturer, distributor or dealer in a case in which initially a complaint was filed only against the vendor, that this section is self-contained and complete in itself and is not subject to Section 239 of the old Code; that the joint trial of the above mentioned persons under this section will not be prejudicial to any of them in their defense in any way and that Section 20A can be invoked only after the trial of the vendor is commenced and before it is concluded but not thereafter.

19. The words "during the trial" used in the section clearly show that 'impleading' contemplated under this section cannot be resorted to after the trial of the vendor has come to an end either by his conviction or acquittal. In other words, the section contemplates a single trial in which the vendor, and manufacturer, distributor or the dealer, as the case may be, have to be jointly tried.

20. Still another argument addressed on behalf of some of the criminal revision petitioners was

that a joint trial of a vendor with the manufacturer, distributor or dealer will deprive them of the right conferred under Section 19 of the Act and that it will also deprive the right of the vendor to examine the warrantor and that of the warrantor to examine the vendor as defense witness. These contentions have also no substance or merit. The argument that in a joint trial an accused would be deprived of the benefit of the examination of a co-accused as a defense witness can be advanced in all joint trials. No doubt an accused is entitled to a fair trial and a fair trial means, a trial fair to both the prosecution and the defense. Cases under the Act are not rare, where in a trial against the vendor, the warrantor figures as a defense witness and supports his plea and in a subsequent trial against the warrantor, when summoned as a defense witness the vendor gives evidence either supporting the warrantor or creating reasonable doubt in the prosecution case against him. The result in both the trials will be acquittal of the accused. Invariably therefore guilty persons escape and the very object of the Act is thus defeated resulting in miscarriage of justice. The right given under Section 19(2) is confined to the vendor while the benefit granted under Sub-Section (3) of this section is available only to the person who has issued a warranty as referred to in Section 14 of the Act. It is not enough, if a vendor proves that the article of food purchased by him is covered by a written warranty in the prescribed form, but

⁹1973 Cri LJ 690 (Delhi)

he should further prove that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

21. In a case against the vendor, the genuineness of the warranty can be proved even without examining the manufacturer, distributor or dealer who issued the warranty. Similarly, in a prosecution launched against a warrantor, even without examining the vendor the warrantor can prove by letting in other items of evidence that the article of food while in the possession of the vendor was not properly stored and that it was not in the same state as he purchased that he said it to the Food Inspector. The vendor also can adduce other items of evidence in support of this plea under Section 19 of the Act. The provisions in the Indian Evidence Act are not wanting in this regard. Section 342A of the old Code corresponding to Section 315 of the new Code enables a person accused of offence to be a competent witness for the defense and give evidence on oath in disproof of the charges framed against him or any person charged together with him in the same trial. Therefore, even in joint trial of a vendor and the manufacturer, distributor or dealer, it is open to them to make use of this section and to be competent witnesses for the defense and to give evidence in support of their plea, if they so desire. An accused person in a joint trial has no right to insist that his co-accused in the case should be discharged or acquitted in order to enable him to summon him as a defense witness, as he is a competent person to prove his plea.

22. If, after impleadment of a manufacturer, distributor or dealer, the proceedings are commenced afresh only in respect of the impleaded accused, it is likely that difficulties and complications may arise in the course of the trial. If during cross-examination of the witnesses who are recalled after the adding of the new accused and in the defense evidence adduced on behalf of the new accused, incriminating materials are disclosed against the original accused, he will not give any chance to adduce defense evidence on his side in rebuttal of the same, if he had already exercised that right before the impleadment of the manufacturer, distributor or dealer. Under the Code of Criminal Procedure, an accused has only one opportunity to adduce defense evidence and that is after the prosecution evidence is closed and he is asked to enter upon his defense.

23. The words and expressions used in Section 20A of the Act are very clear that the manifest intention of the legislature in enacting this section was to have a joint trial of the persons mentioned therein. In order to avoid prejudice or difficulties to all concerned, it is necessary and, in any view, desirable, to commence the entire proceeding afresh with all the accused (the original as well as the impleaded) on the array. It would be violating the will of the law-makers and the spirit of law and doing violence to the language of the section, if a different construction was to be put on this section.

24. Having given due regard to various contentions raised before us and on a careful scrutiny and consideration of Section 20A of the Act, in the light of the principles of law applicable in the matter, our conclusions on the points raised before us are as follows :

(i) Section 20A of the Act envisages a joint trial of the vendor and the manufacturer or distributor or dealer of any article of food, as the case may be;

(ii) The powers given under Section 20A can be invoked only during the trial of any person, not being the manufacturer, distributor or dealer of any article of food, for any offence under the Act;

(iii) Under this section it is imperative on the part of the court to implead a manufacturer, distributor or dealer of any article of food, whenever the court is satisfied on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with the offence with which the vendor, the original accused, is charged;

(iv) The satisfaction referred to in this section is to be reached by the court on the basis of the materials already on record and no hard and fast rule or any guide-line can be laid down regarding the data or quantum of materials necessary or sufficient to reach this satisfaction;

(v) Even if a manufacturer, distributor or dealer is not present in court the Magistrate is empowered to implead such a manufacturer, distributor or dealer without a complaint or written consent or sanction as contemplated under Section 20 of the Act;

(vi) Impleading under this section can be done at any stage after the commencement of the trial and before the conclusion of the trial of the vendor, the original accused, by convicting or acquitting him and not thereafter;

and

(vii) After impleadment of the manufacturer, distributor or dealer, as the case may be, the entire proceeding against the original as well as the newly added accused shall commence afresh in accordance with law.

25. We shall now endeavour to carefully examine the facts in each of the criminal appeals and criminal revision petitions and also the criminal miscellaneous petition, in the light of the conclusions reached and stated above.

26. The facts of the criminal appeals have been briefly dealt with in the foregoing paragraphs. The original accused in Crl. Appeal Nos. 222, 223, 225, 226 and 227 of 1973, from whom the Food Inspector purchased samples of gingelly oil for the purpose of analysis, were put on trial, as

the gingelly oil purchased was found to be adulterated on analysis. In all these cases, the accused-vendors, during trial, when examined on the prosecution evidence set up a plea that the articles sold by them to the Food Inspector were purchased by them under written warranties and they are entitled to the protection granted under Section 19(2) of the Act. In Crl. Appeal Nos. 226 and 227 of 1973, the Manager and partner of a firm called M/s. M.K.K. Annamalai Chettiar and Sons, Perundurai, who are manufacturing and distributing gingelly oil and who sold gingelly oil to the original accused in those cases under written warranties, were examined as defense witnesses in the trial court; whereas in all the cases forming the subject-matter of Cri. Appeal Nos. 232, 223 and 225 of 1973, the Managing partner of the concern M/s. C. Doraswamy Chetty, Perumdurai, who sold giagelly oil under written warranties to the accused-vendors, was examined as defense witness. These defense witnesses gave evidence in support of the contentions of the accused in all these cases. It was at this stage that the Food Inspector filed applications in these cases inviting the attention of the court to its powers under Section 20A of the Act. The trial court, thereupon, an being satisfied an the evidence already on record, invoking its powers under Section 20A, impleaded these persons, who said adulterated gingelly oil and issued warranties to the original accused, as additional accused. The newly impleaded accused are Respondents 3 to 6 in Crl. Appeal Nos. 222, 223 and 225 of 1973 and Respondents 3 to 5 in Crl. Appeal Nos. 226 and 227 of 1973. The learned Magistrate on impleading these persons acquitted the original accused. When once a court acquits an accused, it becomes functus officio and there is no question of that court continuing with any proceeding in that case any longer. The learned Magistrate, after acquitting the original accused in the respective cases, has taken steps against the newly impleaded accused in the self same cases. In *V.N. Kamdar v. Municipal Corporation, Delhi*¹⁰ the Magistrate had not applied his mind and considered the evidence before him with a view to exercise the powers under Section 20A. In that case, the learned Magistrate made only an observation in the concluding portion of his judgement that it is left open to the Municipal Corporation to institute a complaint against the warrantor concerned. There was also no appeal against the acquittal of the vendors filed in that case. But, in all the cases before us, the trial court, on a consideration of the evidence before it, was satisfied that the persons impleaded in the cases were concerned with the offence with which the vendors in the cases stood charged; but instead of proceeding with a single trial with all the accused, as pointed out earlier, acquitted the vendors and proceeded against the newly impleaded accused. The proper and correct procedure for the Magistrate after the impleadment, was to start the entire proceeding afresh with the vendors and the newly added accused on the array. There are compelling reasons to interfere with these acquittals. Crl. Appeal Nos. 222, 223, 225, 226 and 227 of 1973 are therefore allowed, the orders of acquittal in C. C. Nos. 136, 137, 138, 139 and 140 of 1972 on the file of the District Magistrate (Judicial) Palghat are hereby quashed and these cases are sent back to the court below for disposal afresh in accordance with Section 20A of the Act and in the light of this judgment.

27. It is the order of impleadment under Section 20A of the Act by the trial court in the various cases that is challenged by the petitioners in the criminal revision petitions. Respondents 3 to 6 in Crl. Appeals Nos. 222, 223, and 225 of 1973 are respectively the petitioners in Crl. R. P. Nos. 356, 398 and 396 of 1973 and Respondents 3 to 5 in Crl. Appeals Nos. 225 and 227 of 1973 are respectively the petitioners in Crl. R. P. Nos. 394 and 395 of 1973. We have gone through the records and we are satisfied that the order of the trial court impleading the various petitioners in the respective cases under Section 20A is perfectly in order and justifiable on the evidence on record in each of these cases. There is no reason therefore to interfere with the orders of impleadment passed in these cases and these revision petitions are hereby dismissed.

28. In Crl. R. P. No. 515 of 1972, the third accused in C. C. No. 94 of 1972 on the file of the District Magistrate (Judicial) Trichur, has challenged the correctness and validity of the order impleading him as an additional 3rd accused in the case. The sample of toor-dhal purchased by the Food Inspector, Trichur Municipality, from accused 1 and 2, the original accused in the case, was found to be adulterated on analysis by the Public Analyst. The vendors in the course of their trial put forward the

¹⁰ AIR 1973 SC 2246 : (1973 Cri LJ 1453)

defense that the particular article of food sold by them to the Food Inspector was purchased by them from a firm called M/s. United Traders under a written warranty. They examined the revision petitioner, who is the Managing Director of the firm, as a defense witness on their side in support of their plea. The Food Inspector, thereupon, filed an application and the learned Magistrate, on being satisfied on the evidence before him, impleaded the petitioner as additional 3rd accused in the case under Section 20A of the Act. The procedure adopted by the learned Magistrate is the one prescribed under Section 20A of the Act and is correct and legal on the basis of the materials already on record. No interference with this order, in the circumstances, is called for : and this revision petition is therefore dismissed.

29. The petitioner in Crl. M. P. No. 730 of 1972, who was impleaded as an additional accused in C. C. No. 93 of 1972 on the file of the District Magistrate (Judicial), Trichur, under Section 20A of the Act, seeks to quash the order of his impleadment under Section 561A of the old Code on the main ground that Section 20A does not contemplate any impleading and much less a joint trial of the vendor with the manufacturer, distributor or dealer. In the course of the trial of the original accused in the case for having sold moongdhal containing prohibited coal tar dye to the Food Inspector, Trichur Municipality, they contended that the article of food sold by them to the Food Inspector was purchased from the petitioner herein who issued a warranty guaranteeing the genuineness of the article. The learned Magistrate on a consideration of the evidence before him impleaded the petitioner as an additional accused in the case under Section 20A of the Act. We have already held that Section 20A contemplates impleadment and joint trial of a manufacturer, distributor or dealer with a vendor. On going through the records, we find that the order of the Magistrate is in accordance with the provisions of Section 20A of the Act and therefore we do not find any ground to interfere with this order. This criminal miscellaneous petition is accordingly dismissed.

30. The first accused in C. C. No. 568 of 1972 before the trial court is the petitioner in Crl. R. P. No. 228 of 1973 and the appellant in Crl. Appeal No. 168 of 1974. He was tried for an offence under the Act for having sold adulterated toordhal to the Food Inspector concerned. On entering upon his defense, he raised a plea that he purchased this article of food from a business concern known as M/s. C. I. P. Ouseph and Sons, Trichur, covered by a written warranty. The managing partner of this concern was examined as Dw. 1 and he admitted the issue of the bill containing the warranty. The Food Inspector at this stage put in an application requesting the trial court to implead the firm which issued the warranty and its partners as additional accused. The learned Magistrate on the basis of the materials on record impleaded the firm and its partners as additional accused 2 to 6. Thereafter the trial court recalled Pw. 1 the Food Inspector and also examined another witnesses as Pw. 3. The additionally impleaded accused cross-examined these witnesses and on that evidence a charge was framed under Section 16(1)(a)(i) read with Section 7(i) of the Act against accused 2 to 6. Pws. 1 and 3 were further cross-examined on behalf of

accused 2 to 6. But the first accused, was not given an opportunity to cross-examine these witnesses and was also not given an opportunity to let in evidence on his side. On conclusion of the trial, the learned Magistrate found the first accused guilty, convicted and sentenced him to suffer simple imprisonment for six months and to pay a fine of Rs. 1000/- and in default of payment of fine to undergo simple imprisonment for two months, and accused 2 to 6 were acquitted.

31. The order of acquittal is challenged by the Ist accused in the criminal revision petition, while he has challenged his conviction and sentence in the criminal appeal, as already stated. Admittedly the first accused was denied an opportunity to cross-examine Pw. 1 who was recalled and re-examined and Pw. 3, who was examined after the impleadment of the additional accused. The counsel for the first accused contended that the right of cross-examination is a very valuable one, that the denial of this right has resulted in great prejudice and miscarriage of justice, that the examination of Pws. 1 and 3 has brought out materials prejudicial to the first accused and that, in these circumstances, the court below should have allowed the request of the first accused to cross-examine Pws. 1 and 3 and also to adduce further defense evidence on his side. It is also not disputed that the request of the Ist accused to examine witnesses on his side in rebuttal of the evidence of Pws. 1 and 3 was not granted. Even if there is no provision in the Code to enable an accused in a warrant case to adduce defense evidence a second time after he has entered on his defense and exercised his right to let in evidence under Section 257 of the old Code (Sections 243 and 247 of the new Code), the court has power in a fit and proper case to summon witnesses under Section 540 of that Code. The statutory right of cross-examination granted to an accused is a very valuable one, as however slender the material for cross-examination may be, the effect of it cannot be gauged. In these circumstances, the conviction of the Ist accused cannot be sustained : and the learned Public Prosecutor appearing for the State and the counsel for the complainant fairly submitted that in the light of the facts stated above, the conviction of the first accused has to be quashed and the case sent back for retrial.

32. The counsel for the revision petitioner in Crl. R. P. No. 228 of 1973 contrary to many of the grounds raised in the memorandum of revision, contended before us that Section 20A of the Act really contemplates a joint trial of the vendor and the manufacturer, distributor or the dealer, as the case may be; that after impleading the persons concerned under this section, the entire proceedings should be commenced afresh against all the accused and that such a procedure will enable all the accused to cross-examine and further cross-examine the prosecution witnesses and also to let in defense evidence. It was further argued that if his client had been granted an opportunity to cross-examine Pws. 1 and 3, he would have certainly elicited sufficient materials to show that he was entitled to the protection under Section 19(2) of the Act and that accused 2 to 6 were guilty of issuing false warranty, that the procedure under Section 20A had been violated and the entire trial had therefore been vitiated by illegality.

33. There is considerable force in these contentions. The denial of the right to cross-examine the prosecution witnesses, especially those examined after the impleadment of accused 2 to 6 is an illegality and a serious infirmity affecting the trial of the case. In these circumstances, taking into consideration the entire facts of the case, we hold the view that this is a proper case where the acquittal of the additionally impleaded accused 2 to 6 has to be interfered with and the case sent back for fresh disposal. Accordingly, allowing the appeal and revision, we set aside the conviction and sentence passed against the Ist accused and the order of acquittal of accused 2 to

6 in C. C. No. 568 of 1972 and remit the case to the court below for commencement of the entire proceeding afresh against accused 1 to 6 in strict compliance of Section 20A of the Act.

Bhaskaran J.

34. In the main judgment my learned brother Kader J. has considered elaborately and dealt with exhaustively all the points argued before us, and I am in agreement with the conclusions reached thereon; nevertheless, in view of the general importance of the questions involved I should like to add a few words of my own.

35. The people of India are confronted with a national problem, which, in recent times, has assumed serious dimensions, arising out of the practice of food adulteration that spreads unabated like the epidemic. The very survival of the society, at the present state, appears to depend to a very large extent upon the rigid and effective enforcement, both in letter and spirit, of the provisions of the Prevention of Food Adulteration Act, hereinafter referred to as the Act, and the taking of other measures to arrest the evil of adulteration-mania so prevalent among the anti-social elements in the community.

36. In a prosecution of the vendor for an offence under the Act lack of mens rea is no defense because of the express provisions contained in that behalf in Sub-Section (1) of Section 19 of the Act. It is to protect and safeguard the interests of the innocent vendors that the provision in Sub-Section (2) of Section 19 has been enacted. Later on, in order to plug the loopholes in the then existing provisions of the Act, discovered in the light of the experience in the actual working of the Act, Section 20A had to be incorporated after due deliberation, by the amending Act (Act 49 of 1964). It is the defense of "hide and seek game" resorted to by the offenders falling within the category of manufacturers, distributors, dealers and vendors among themselves to evade the punishment, accusing each other to suit the convenience of the occasion, that presumably prompted the legislature to come forward with the provisions contained in Section 20A of the Act. The object sought to be achieved by the newly introduced section can be realised only if the warrantor and the vendor are brought together to take their trial as co-accused in one and the same proceeding. The wording of Section 20A leaves no room for doubting the intention of the legislature in this regard. In giving effect to the true meaning of the section, the impleading of the other persons concerned in the offence (manufacturer, distributor or dealer) along with the vendor against whom proceedings have already been initiated, has necessarily to be after the trial against the original accused (the vendor) has begun; and the proceeding thereafter has to be a joint one for all the accused. Section 20A implies that it is imperative to follow a special procedure in order to give full effect to the provisions incorporated by the amendment; and to that extent it is not necessary by virtue of the provisions contained in Sub-Section (2) of Section 5 of the Code of Criminal Procedure (1898), hereinafter referred to as the Code, which Code alone applies to the trial of the cases on hand, to strictly adhere to the procedure prescribed by the Code for cases falling within the ambit of Sub-Section (1) of that section (Section 5 of the Code). Even assuming that the provisions contained in Sections 233 to 239 of the Code would govern the trial of these cases, clauses (b), (c) and (d) of Section 239 of the Code would amply justify the joint trial of the persons who with unity of purpose are involved at different stages in the same transaction in which the chain of events starts with the manufacturing process and ends with the sale for consumption. The procedure of law is intended to further the course of justice, not to frustrate it by enabling one of the accused to over-reach either the prosecutor or the co-

accused. On an anxious and careful consideration of the scheme of the Act and the relevant provisions of the Code, we are satisfied that reasonable opportunity for defense, according to law, would be available to all the accused arrayed at the joint trial; as the entire evidence would be taken afresh in the presence of all the accused and each accused would be given an opportunity to cross-examine the witnesses deposing against him and to adduce defense evidence, if any he desires to, no prejudice whatsoever would, as seem to be apprehended by the accused persons before us, result from the joint trial contemplated in Section 20A of the Act.

Narayana Pillai J.

37. I also agree in disposing of these cases in the manner indicated by our learned brother, Mr. Justice Kader, and in view of the importance of the questions involved I may also add a few words.

38. With the big strides made in science and technology food production has increased and along with it problems connected with prevention of food adulteration have also increased. Chemists juggle with the atoms of carbon, hydrogen, oxygen, nitrogen chlorine and the rest and far outrun the working of nature. They can entrap the nitrogen in the AIR and use it to raise wheat and paddy to feed and at the same time they can use it to make high explosives to slaughter their fellows. It is said to be possible to produce from AIR even products which can be eaten and digested. The day is not far off when, in the main, food would be manufactured in chemical factories fields would fall out of cultivation, and agricultural labourers would be replaced by chemical experts.

39. Side by side with the advance of Science, businessman's duties and consumer's rights have also increased and grown up. At present unmindful of the health of the consumer a supplier has no scruples to put up for sale in the market adulterated articles of food and make the health of the consumer hazardous. Just as a supplier has his business interests to be promoted an ordinary citizen has his corresponding consumer interests to be safeguarded. In the constructive tension in democracy of these competing interests of the businessman and the consumer each measures the strength of the other and the sound produced by the vibration can be heard not only in public platforms and legislatures but also in courts. The passing of the Prevention of Food Adulteration Act is a win for the consumer.

40. There are several rights such as right to safety, right to be heard, right to know, right to choose and right to fair agreement involved in consumerism and President Kennedy gave due recognition to many of them in his Consumer's Bill of Rights Message of 1962.

41. Consumerists claim their grievances being heard and redressed by Government. In some Governments there are already separate ministerial portfolio with consumer-protection-responsibilities to deal with consumer's grievances. Right to honesty strikes at the heart of the marketing system. Legislations regarding prohibition of economic deceptions as in weights and measures and packing and labelling are in recognition of that right. To prevent consumer being made an easy victim of unfair bargains. Acts to relieve him from unconscionable transactions have been passed in some countries. In order to shop wisely and efficiently a consumer is entitled to know the facts about the article he purchases. Towards that there are already in some countries grading and informational legislation. Antidumping legislation in some countries is in recognition of the right to choose. Many other rights like right to privacy, right to correct and

right to peace of mind can also be thought of in consumerism, a fast-developing branch of law, but they have yet to take a concrete shape.

42. The most important right in consumerism is the right to safety and in our country it was recognized in the Prevention of Food Adulteration Act as early as in 1954 Safety is necessary especially in food and drugs. The object of the Act as to prevent food adulteration and make food exposed for sale safe for consumption.

43. Insistence on issue of warranty on sale by the manufacturer or distributor or dealer to the vendor would make it easy to find out the adulterator and consequently would discourage adulterated articles of food being put up for sale. Section 14 of the Act provides that when a manufacturer or distributor or dealer sells an article to a vendor he should give the vendor a warranty in writing regarding the nature and quality of the article.

44. When a Food Inspector purchases an article from a vendor he ought to investigate whether the nature and quality of the article are covered by a warranty. In the memorandum he prepares after purchase of the article one would naturally expect him to state the result of that investigation. If after investigation he finds that it is covered by a warranty and the result of the analysis by the Public Analyst is that it is adulterated the proper course for him is to file a complaint against both the vendor and the person who gave him warranty and after adducing evidence leave it to court to decide the question of guilt.

45. When the provisions in the Act are comprehensive, if adulterators go scot-free in the end it may be on account of shortcomings in implementation. In spite of the provisions in Sections 14 and 16 of the Act prohibiting sale of an article by a manufacturer, distributor or dealer to a vendor without a warranty in writing and making a violation of it an offence Food Inspectors often file complaints only against vendors and do not even mention in the complaints they file anything about presence or absence of warranty or of the offence for not issuing warranty. Such lukewarm conduct on their part inevitably tells upon the result of the trial. An ordinary citizen who purchases an adulterated article of food can also file a complaint but he has no power to enter and inspect places where the articles of food are manufactured or stored or exposed for sale. Consequently he cannot get details of the warranty. But that is not the position of a Food Inspector. By resorting to separate trials of the vendor and the person who gave warranty to him Food Inspectors give a helping hand to them to collude for the benefit of both. The concerned authorities may note this trend. It is up to them to make the Food Inspectors fully alive to the serious responsibilities entrusted with them by the Act and to take appropriate action against the delinquent officers.

46. In proper cases besides the offences enumerated in Section 16(1)(a) to (f) of the Act there can also be a charge for abetment because the Act is a special law, it being one dealing with the individual subject of Prevention of Food Adulteration and providing specific punishment, and Section 109 of the Indian Penal Code dealing with abetment read along with Section 40 of that Code applies to offences under special laws also.

47. From manufacture up-till consumption there is a thread binding the entire transaction for every article of food. Warranty problems connected with it are consumer problems regarding those articles also. We respectfully agree with the decision of the Delhi High Court in 1973 Cri

LJ 690 (FB) that from the first stage of manufacture of an article up-till the last stage of its sale by the vendor there is a unity of purpose and design and that they are all stages in the same transaction so as to attract joint trial under Section 223(d) - old Section 239(d) - of the Criminal Procedure Code. But we do not agree with the view expressed there that a charge against the vendor and the person who gave warranty to him would fall only under clause (d) of Section 223. It can fall under clauses (b) and (c) of that Section also because there can be a successful charge for abetment also against them and as the punishments provided for all the offences in Section 16(1)(a) to (f) of the Act are the same they have to be treated under Section 219(2) - old Section 234(2) - of the Criminal Procedure Code as offences of the same kind.

48. If complaint filed is only against the vendor and not against the person who gave warranty to him the court can under Section 20A of the Act take cognisance of the offence or offences he has committed and proceed against him also. That is notwithstanding the restrictions regarding the launching of prosecution contained in Section 20 of the Act.

49. The provision in Section 20A that during the trial against the vendor the court can proceed against the manufacturer, or distributor or dealer who is also concerned in, meaning interested in or involved in, that offence implies that he can be proceeded against in the same trial. In other words what it means is that they can be jointly tried.

50. Joint trial provided in Section 20A of the Act is a special procedure regarding trial of offences under a law other than the Indian Penal Code and hence under Section 4(2) of the Criminal Procedure Code - old Section 5(2) - it has to be followed even if the provisions of Section 223 or any other section in that Code do not permit joint trial in such a case.

51. Facts regarding warranty, proper storing of an article and the state of the article from the time it came into the hands of the vendor until he sold it are especially within the knowledge of the person who gave the warranty and the vendor, and not the complainant. It is common knowledge and experience that separate trials of the vendor and the person who gave warranty to him throw open flood gates for collusion between them for securing the discharge of acquittal of each. Joint trial prevents that and tends to advance the cause and course of justice.

52. Today by a sophisticated advertising agency the manufacturer first creates mass consumption markets and then sustains them by claims and images often far removed from reality. Before reaching the vendor the articles may pass through several distributors and dealers and they may be in different states also. Often the vendor is a mere conduit pipe for articles manufactured and prepackaged hundreds of miles away from the place of sale. In respect of the same adulterated article if it is separate trial that has to be held against each concerned in the offences relating to that article trials may sometimes have to be held in different states and that is an inconvenience which would prejudice many. Joint trial obviates all that.

53. On all questions involved in the case, whether the article is adulterated or not, whether there is a warranty or not, whether the vendor properly stored the article or not and whether the vendor sold the article in the same state or not, both the vendor and the person who gave the warranty to him are interested. It is only fair that in such circumstances all the points in controversy are decided in the presence of all the parties concerned.

54. By joint trial multiplicity of proceedings and conflict of findings can also be avoided.

55. In AIR 1973 Supreme Court 2246 : (1973 Cri LJ 1453) the Supreme Court upheld separate trial of the person who gave the warranty. But that was because from the acquittal of the vendor in the earlier trial there was no appeal and the acquittal had become final and because there was no bar for separate trial of the person who gave the warranty. That does not mean that the Supreme Court held there that separate trial was the proper course in such a case. On the other hand the Supreme Court expressly said in that case that the proper course was to resort to joint trial. The Court went a step further and said that if the conditions laid down in Section 20A were satisfied it was imperative that at one and the same trial all the persons concerned with the offence should be tried together. Provisions regulating procedure are usually imperative and not merely directory.

56. When under Section 20A of the Act and additional person is brought on the array of the accused proceedings have to commence afresh against all. There is no general inconvenience or hardship calling for a different interpretation. Section 351(2) of the old Criminal Procedure Code provides that in respect of the person additionally made accused fresh proceeding has to start. It was submitted that by implication it meant that there need not be fresh proceeding in respect of the original accused. That submission is not correct. Section 351(2) has application only to offenders detained under Section 351(1) of the old Code and the clause in Section 20A of the Act "notwithstanding anything contained in Sub-Section (1) of Section 351" takes in by implication Section 351(2) also.

57. At the end of the joint trial the charge against each accused has to be separately considered and the case has to be disposed of by the same judgment.
Order accordingly.